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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
10

11 HECTOR VALLES,  
12 Plaintiff

13 v.

14 CAROLYN W. COLVIN, Acting  
15 Commissioner of Social Security,  
16 Defendant.  
17

No. EDCV 15-0432 (KS)

**MEMORANDUM OPINION AND  
ORDER**

18 **INTRODUCTION**  
19

20 On March 6, 2015, Hector Valles (“Plaintiff”), filed a Complaint seeking  
21 judicial review of a denial of his application for a period of disability and disability  
22 insurance benefits (“benefits”) (Complaint, ECF No. 1.) On August 17, and 26, the  
23 parties consented, pursuant to 28 U.S.C. § 636(c), to proceed before the undersigned  
24 United States Magistrate Judge. (Consents, ECF Nos. 23, 24.) On December 29,  
25 2015, the parties filed a Joint Stipulation, whereby Plaintiff seeks an order reversing  
26 the Commissioner’s decision and awarding benefits or, in the alternative, remanding  
27 the matter for further administrative proceedings; and Defendant seeks an order  
28 affirming the Commissioner’s decision or, in the alternative, remanding the matter

1 for further administrative proceedings. (Joint Stip., ECF No. 32). The Court has  
 2 taken the Joint Stipulation under submission without oral argument.

### 3 4 **SUMMARY OF ADMINISTRATIVE PROCEEDINGS**

5  
 6 On January 4, 2012, Plaintiff filed an application for benefits, alleging  
 7 disability beginning November 1, 2001 due to an above-elbow amputation of his left  
 8 arm with phantom limb pain and right-sided carpal tunnel syndrome as well as  
 9 hypertension, headaches, gastroesophageal reflux disease, back pain, knee pain, and  
 10 depressive disorder. (Administrative Record (“A.R.”) 11; 13-15.) Plaintiff’s claim  
 11 was denied initially on August 29, 2012 and upon reconsideration on March 6, 2013.  
 12 (A.R. 11; 85-88.) On March 20, 2013, Plaintiff requested a hearing, which was held  
 13 on October 9, 2013. (*Id.*) Administrative Law Judge Paul Colter (“ALJ”) presided  
 14 over the hearing which included testimony by an impartial vocational expert (“VE”)  
 15 and Plaintiff who was represented by an attorney. (A.R. 11; 20.) In a written  
 16 decision dated November 29, 2013, the ALJ denied benefits determining that  
 17 Plaintiff suffered from non-severe impairments. (A.R. 8-24.) On January 7, 2015,  
 18 the Appeals Council denied Plaintiff’s request for review of that decision. (A.R. 1-  
 19 3.) Plaintiff then filed this civil action.

### 20 21 **SUMMARY OF ADMINISTRATIVE DECISION**

22  
 23 The ALJ utilized the five-step sequential evaluation process to determine  
 24 whether Plaintiff was disabled. 20 C.F.R. § 416.920. At the first step, the ALJ  
 25 found that Plaintiff had engaged in substantial gainful activity during 2006  
 26 repairing washing machines (DOT<sup>1</sup> 627.261-010 SVP 7, medium) and as a general  
 27 helper at Goodwill (DOT 919.683-014, SVP 2, light), but concluded there had been

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<sup>1</sup> “DOT” refers to the Dictionary of Occupational Titles.

1 a continuous 12-month period(s) since the alleged disability onset date during which  
2 Plaintiff did not engage in substantial gainful activity and based the remainder of the  
3 findings on the period when Plaintiff did not engage in substantial gainful activity.  
4 (*Id.*) (A.R. 13.) At the second step, found that Plaintiff suffered from the following  
5 severe impairments: “amputated left arm (above elbow), with phantom limb pain;  
6 and right-sided carpal tunnel syndrome.” (A.R. 13.) The ALJ noted that Plaintiff  
7 alleged other impairments, including hypertension, headaches, gastroesophageal  
8 reflux disease, back pain, knee pain, and depressive disorder, but found that these  
9 impairments did not individually or in combination “cause more than minimal  
10 limitation in the [Plaintiff’s] ability to perform basic work activities,” and, on that  
11 basis, found that these additional impairments were non-severe. (*Id.*)  
12

13 At the third step, the ALJ considered Plaintiff’s impairments and determined  
14 that such impairments did not meet or medically equal the criteria of an impairment  
15 listed in 20 CFR Part 404, Subpart P, Appendix 1. (A.R. 15-16.) Next, after  
16 considering Plaintiff’s questionnaire and testimony, medical records (including  
17 MRIs, X-rays, progress notes, records of taking medication, a consultative exam by  
18 Dr. Sean To M.D., and the opinions of four state agency consultant physicians, Tim  
19 Schumacher, PhD, Kevin Gregg, M.D., F, Kalmar, M.D., and J. Hartman, M.D.), the  
20 ALJ determined that Plaintiff had the residual functional capacity (“RFC”) to  
21

22 perform “light work” as defined in 20 CFR 416.967 (b), except he is able to  
23 lift, carry, push or pull 20 pounds occasionally and 10 pounds frequently;  
24 stand/walk for about 6 hours out of 8; sit for about 6 hours out of 8;  
25 frequently perform postural activities such as climbing, balancing, stooping,  
26 kneeling, crouching, and crawling; and never climb ladders, ropes, or  
27 scaffolds. Regarding his left upper extremity, [Plaintiff] cannot reach, handle,  
28 finger, or feel. Regarding his right (dominant) upper extremity, he can

1 frequently handle and finger. Lastly, [Plaintiff] must avoid concentrated  
2 exposure to extreme cold, vibration, and hazards, such as machinery and  
3 heights.

4  
5 (A.R. 19.)  
6

7 At the fifth step, the ALJ considered Plaintiff's RFC, "age, education, work,  
8 experience," and the VE testimony to conclude that Plaintiff can perform "jobs that  
9 exist in significant numbers in the national economy." (A.R. 19.) This was based  
10 on the VE's testimony that "given all of [the limiting] factors [a hypothetical]  
11 individual would be able to perform the requirements of representative occupations  
12 such as surveillance systems monitor (Dictionary of Occupational Titles ("DOT")  
13 379.367-010, unskilled, SVP 2, sedentary), with 5,000 positions nationally and  
14 information clerk at a call center (DOT 237.367-046, unskilled, SVP 2, sedentary),  
15 with 80,000 positions nationally." (A.R. 19-20.)  
16

## 17 STANDARD OF REVIEW

18

19 Under 42 U.S.C. § 405(g), this Court reviews the ALJ's decision to determine  
20 whether it is free from legal error and supported by substantial evidence in the  
21 record as a whole. *Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007). "Substantial  
22 evidence is more than a mere scintilla but less than a preponderance; it is such  
23 relevant evidence as a reasonable mind might accept as adequate to support a  
24 conclusion." *Gutierrez v. Comm'r of Soc. Sec.*, 740 F.3d 519, 522-23 (9th Cir.  
25 2014) (internal quotation marks and citations omitted). "Even when the evidence is  
26 susceptible to more than one rational interpretation, [reviewing courts] uphold the  
27 ALJ's findings if they are supported by inferences reasonably drawn from the  
28 record." *Molina v. Astrue*, 674 F.3d 1104, 1110 (9th Cir. 2012). The Court will

1 also not reverse the Commissioner's decision "[w]here evidence is susceptible to  
2 more than one rational interpretation," even if it were to disagree with the ALJ's  
3 conclusions. *Burch v. Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005).

4  
5 Where the ALJ has properly considered all of the limitations for which there  
6 is record support, the ALJ's RFC determination will not be overturned so long as the  
7 ALJ applied the correct legal standard and the RFC assessment is supported by  
8 substantial evidence. *See Bayliss v. Barnhart*, 427 F.3d 1211, 1217 (9th Cir. 2005).  
9 Although this Court cannot substitute its discretion for that of the ALJ, it must  
10 nonetheless review the record as a whole, "weighing both the evidence that supports  
11 and the evidence that detracts from the Commissioner's conclusion." *Lingenfelter v.*  
12 *Astrue*, 504 F.3d 1028, 1035 (9th Cir. 2007) (internal quotation marks and citation  
13 omitted). "The ALJ is responsible for determining credibility, resolving conflicts in  
14 medical testimony, and for resolving ambiguities." *Andrews v. Shalala*, 53 F.3d  
15 1035, 1039 (9th Cir. 1995).

16  
17 The Court may review only the reasons stated by the ALJ in her decision "and  
18 may not affirm the ALJ on a ground upon which [s]he did not rely." *Orn*, 495 F.3d  
19 at 630; *see also Connett v. Barnhart*, 340 F.3d 871, 874 (9th Cir. 2003). However,  
20 the Court will not reverse the Commissioner's decision if it is based on harmless  
21 error, which exists when it is "clear from the record that an ALJ's error was  
22 'inconsequential to the ultimate nondisability determination.'" *Robbins v. Soc. Sec.*  
23 *Admin.*, 466 F.3d 880, 885 (9th Cir. 2006) (quoting *Stout v. Comm'r of Soc. Sec.*,  
24 454 F.3d 1050, 1055 (9th Cir. 2006).)

25  
26 Courts must "remand for further proceedings when . . . an evaluation of the  
27 record as a whole creates serious doubt that a claimant is, in fact, disabled."  
28

1 *Garrison v. Colvin*, 759 F.3d 995, 1021 (9th Cir. 2014); *see also Burrell v. Colvin*,  
 2 775 F.3d 1133, 1140-42 (9th Cir. 2014).

## 3 4 **DISCUSSION**

5  
 6 Plaintiff challenges the ALJ's decision on the following two grounds, that: (1)  
 7 the ALJ's adverse credibility assessment of Plaintiff was not supported by  
 8 substantial evidence; and (2) there was an inconsistency between the DOT job  
 9 requirements and the ALJ's holding that Plaintiff "can perform the jobs such as  
 10 surveillance systems monitor and information clerk at a call center." (Joint Stip. at  
 11 3.)

### 12 13 **1. The ALJ's Credibility Assessment Is Legally Sufficient and Supported by** 14 **Substantial Evidence.**

15  
 16 The ALJ found that Plaintiff's "statements concerning the intensity, persistence  
 17 and limiting effects of [the alleged] symptoms are not entirely credible." (A.R. at  
 18 17.)

#### 19 20 **a. Legal Standard for Assessing A Claimant's Credibility**

21  
 22 An ALJ must make two findings before determining that a claimant's pain or  
 23 symptom testimony is not credible. *Treichler v. Comm'r of Soc. Sec.*, 775 F.3d  
 24 1090, 1102 (9th Cir. 2014). "First, the ALJ must determine whether the claimant  
 25 has presented objective medical evidence of an underlying impairment which could  
 26 reasonably be expected to produce the pain or other symptoms alleged." *Id.* (quoting  
 27 *Lingenfelter*, 504 F.3d at 1036). "Second, if the claimant has produced that  
 28 evidence, and the ALJ has not determined that the claimant is malingering, the ALJ

1 must provide specific, clear and convincing reasons for rejecting the claimant's  
2 testimony regarding the severity of the claimant's symptoms" and those reasons  
3 must be supported by substantial evidence in the record. *Id.*; *see also Marsh v.*  
4 *Colvin*, 792 F.3d 1170, 1174 n.2 (9th Cir. 2015).

5  
6 **b. The ALJ's Analysis of Plaintiff's Credibility**

7  
8 The ALJ evaluated Plaintiff's statements and hearing testimony, which the ALJ  
9 summarized as follows:

10  
11 The claimant alleges he is unable to work due to injuries he sustained in a motor  
12 vehicle accident on his alleged onset date, November 1, 2001. Specifically, the  
13 claimant as in a coma after the accident, and his left arm was amputated above  
14 the elbow when he woke up. He has had 2 prosthetic devices for his missing left  
15 arm, but they do not work. He still experiences phantom limb pain. He also  
16 experiences lower back and knee problems, especially on the left side, as well  
17 as high blood pressure, depression, and carpal tunnel syndrome in his right  
18 upper extremity, which causes numbness and pain in his wrist and hand. He  
19 only has 50% use of his left leg, and cannot hold objects with his right hand. He  
20 describes his pain as constant and severe (10 on a scale of 10), and said he  
21 spends his days watching television and napping. His medications cause side  
22 effects like dizziness, nausea, weakness, constipation, and tiredness. He can  
23 only walk about one block before needing to stop and rest for 15 minutes.  
24 Overall, his impairments affect his ability to lift, squat, bend, stand, reach, walk,  
25 sit, kneel, climb stairs, remember, complete tasks, concentrate, use his hands,  
26 and get along with others.

27  
28 (A.R. 16-17.)

1 The ALJ found that Plaintiff's "medically determinable impairments could  
2 reasonably be expected to cause the alleged symptoms." (A.R. 17.) While the ALJ  
3 noted that examining physician, Linda Smith, MD, "observed that [Plaintiff] was  
4 probably trying to manipulate her, and that he probably was not compliant with his  
5 medication" (A.R. 18), the ALJ did not determine that Plaintiff was malingering.

6  
7 **i. Specific, Clear, and Convincing Reasons Supported by**  
8 **Substantial Evidence**  
9

10 The ALJ must "specifically identify the testimony [from the claimant that]  
11 she or he finds not to be credible and . . . explain what evidence undermines the  
12 testimony." *Treichler*, 775 F.3d at 1102 (quoting *Holohan v. Massanari*, 246 F.3d  
13 1195, 1208 (9th Cir. 2001)). Plaintiff argues that although "the ALJ briefly  
14 summarized plaintiff's testimony and statements, the ALJ did not provide which  
15 statements he specifically accepted or rejected nor did he provide clear and  
16 convincing reasons for rejecting plaintiff's testimony and statements." (Joint Stip.  
17 at 5.)  
18

19 The ALJ did, in fact, identify specific inconsistencies that cast doubt on  
20 Plaintiff's credibility as a whole. The ALJ noted that "although [Plaintiff]  
21 consistently reported phantom limb pain and medication side effects to treatment  
22 providers, he worked after his alleged onset date, including skilled, medium jobs,  
23 which he performed at substantial gainful activity levels." (A.R. 18.) Although  
24 Plaintiff "indicated that he is unable to perform any activities of daily living," he  
25 also indicated that "he did not perform any of these tasks prior to his alleged onset  
26 date." (*Id.*) Further, the ALJ observed that Plaintiff's medical examinations  
27 "routinely document largely normal physical and mental functioning." (*Id.*)  
28



On this record, the Court finds that the ALJ provided specific, clear and convincing reasons for discounting Plaintiff's credibility. *See Orn*, 495 F.3d at 636 (ALJs may use inconsistencies between the plaintiff's testimony and prior statements, conduct, and daily activities as grounds for discrediting the plaintiff's subjective symptom testimony); *see also Ghanim v. Colvin*, 763 F.3d 1154, 1165 (9th Cir. 2014) (a claimant casts doubt on his claim of disability by holding himself out as capable of working after the alleged onset date); *Bray v. Comm'r of Soc. Sec. Admin.*, 554 F.3d 1219, 1227 (9th Cir. 2009) (An ALJ may properly discredit a claimant's testimony where he worked and sought out other employment after the alleged onset of disability). Further, the ALJ's credibility determination is supported by substantial evidence in the record.

## ii. Substantial Evidence Supports the ALJ's Adverse Credibility Determination

Besides his own testimony, little in Plaintiff's objective medical record supports a finding of disability from the alleged onset date of November 1, 2001. Plaintiff's medical history is comprised largely of records from 2012 to 2013, with the exception of records dating from his left arm amputation and left knee surgery following his automobile accident in late 2001 (A.R. 273-83), and a single psychiatric evaluation dated October 13, 2009, where Dr. Smith concluded Plaintiff's "psychiatric prognosis is fair." (A.R. 203.) The ALJ only gave Dr. Smith's assessment "some weight" and noted that the "remainder of the evidence of record . . . fails to demonstrate any deficits in the [Plaintiff's] mental functioning." (A.R. 14.)

After his amputation and knee surgery, there appears to be little or no objective medical evidence—aside from the prescription of pain medication—

1 corroborating Plaintiff's complaints of "really bad" back pain five times per week,  
2 knee pain every day, "really bad" hand and arm pain, depression or any mental  
3 health conditions. (A.R. 37-41, 255, 262). The ALJ also noted that despite  
4 objective evidence of carpal tunnel syndrome, Plaintiff declined surgery  
5 "suggesting that this impairment may not be as bothersome as alleged." (*Id.*) The  
6 ALJ reasoned that taking these factors in combination, "these aspects of the record  
7 indicate that the claimant is only partially credible." (*Id.* at 19.) Even so, the ALJ  
8 restricted Plaintiff to a reduced range of light work given the evidence of his left  
9 arm amputation, right arm carpal tunnel syndrome, an osteochondral defect of the  
10 medial femoral condyle of his left knee, chronic hypertension, phantom limb pain  
11 and medication side effects. (*Id.*)

12  
13 While "subjective pain testimony cannot be rejected on the *sole* ground that it  
14 is not fully corroborated by objective medical evidence," here it is bolstered by  
15 Plaintiff's prior work which is inconsistent with his allegations of complete  
16 disability. *Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001) (emphasis  
17 added) (citation omitted). Plaintiff first applied for benefits in 2012, alleging a  
18 disability onset date of November 1, 2001. However, between 2006 and 2011,  
19 Plaintiff, by his own admission, worked on and off as an appliance technician for a  
20 laundromat, including lifting and moving heavy machinery. (A.R. 31-32, 164.)  
21 Plaintiff states that he stopped working on March 31, 2011 because he "was laid off  
22 due to lack of work and also [his] disability [sic] wwas affecting [his] ability to  
23 work." (A.R. 31, 151, 152.) Plaintiff testified that his low back pain started "when  
24 [he] was working --doing the appliances because [he] used to deliver . . . things  
25 ranging from 250, to 350 pounds." (A.R. 36.) He further testified that "somehow  
26 [he] was able to do that. [He] felt healthy enough. So [he] was delivering the  
27 machines, repairing and everything. . . .[O]nce in a while, would feel like oh, my  
28

back.” (A.R. 36. *See also* A.R. 32 (“My back and everything wasn’t that bad. And then again it started going out.”).)

Thus, to the extent that the ALJ discounted Plaintiff’s testimony about the intensity, persistence and limiting effects of the alleged symptoms, the ALJ explained his findings with legally sufficient reasons supported by substantial evidence in the record. *Chaudhry v. Astrue*, 688 F.3d 661, 672 (9th Cir. 2012) (Where, as here, the ALJ’s finding is supported by substantial evidence, the Court may not engage in second-guessing.)

## **2. The ALJ’s Step Five Determination is Not Inconsistent with the DOT.**

Plaintiff argues that the ALJ erred at step five because he adopted the findings of the VE identifying jobs that Plaintiff could perform even though “both jobs identified by the VE are inconsistent with Plaintiff’s limitations,” as detailed in the ALJ’s RFC. (Joint Stip. at 15.) Specifically, Plaintiff contends that the identified jobs “of a surveillance systems monitor while not requiring any reaching, handling, fingering or feeling still requires use of his bilateral upper extremities and information clerk at a call center would require plaintiff to do a combination of reaching, handling, and fingering with the bilateral upper extremities.” (*Id.* at 16.) Because the ALJ determined that Plaintiff’s RFC precluded jobs that require, *inter alia*, reaching, handling, fingering, or feeling with his left upper extremity, Plaintiff claims that the ALJ erred. (A.R. 16; Joint Stip. at 16.)

At step five, the burden shifts to the ALJ to identify jobs that exist in significant numbers in the national economy that the claimant can perform. *Lounsbury v. Barnhart*, 468 F.3d 1111, 1114 (9th Cir. 2006); *Tackett v. Apfel*, 180 F.3d 1094, 1100 (9th Cir. 1999); *Johnson v. Shalala*, 60 F.3d 1428, 1432 (9th Cir.

1 1995). The ALJ can meet this burden by: (1) the testimony of a VE, who can assess  
 2 the claimant's limitations and identify any existing jobs the claimant can perform; or  
 3 (2) relying on the Medical-Vocational Guidelines set forth in 20 C.F.R. part 404,  
 4 Subpart P, Appendix 2. *Lounsbury*, 468 F.3d at 1114; *Tackett*, 180 F.3d at 1100-  
 5 01. The ALJ may also rely on the DOT in evaluating whether the claimant is able to  
 6 perform other work in the national economy. *Johnson*, 60 F.3d at 1435; *see also* 20  
 7 C.F.R. § 416.966(d)(1) (DOT is source of reliable job information).

8  
 9 Here, the ALJ relied on the testimony of the VE to determine whether  
 10 Plaintiff, given his RFC, could perform other jobs that exist in significant numbers  
 11 in the national economy. (A.R. 47.) Following the VE's testimony, the ALJ asked  
 12 the VE "has your testimony today been according to the DOT?" and received an  
 13 affirmative response. (A.R. 47.) Based on this exchange, the Court cannot  
 14 determine conclusively that the ALJ met his affirmative responsibility to ask about  
 15 any possible conflict between the VE's evidence and information provided in the  
 16 DOT. *See Massachi v. Astrue*, 486 F.3d 1149, 1153 (9th Cir. 2007); *See also* SSR  
 17 00-4p at \*4 (describing ALJ's obligation to identify and investigate potential  
 18 conflicts with the DOT.) *See also Mejia v. Colvin*, 2015 U.S. Dist. LEXIS 146384,  
 19 17-18 (C.D. Cal. Oct. 28, 2015) (citing *Wentz v. Comm'r Soc. Sec. Admin.*, 401 F.  
 20 App'x 189, 191 (9th Cir. 2010) (emphasizing that an ALJ is required to directly ask  
 21 the VE "whether her testimony conflicted with the DOT," and distinguishing cases  
 22 where the "ALJ asked the VE if her testimony was consistent with the DOT, not  
 23 whether it conflicted with the DOT," and where the "ALJ asked the VE whether her  
 24 opinion was based on the DOT.")). However, the Court need not reach this issue  
 25 because it finds no inconsistencies between the VE's testimony and the DOT.<sup>2</sup>

26  
 27 <sup>2</sup> The Commissioner suggests that "Plaintiff's declination to question the VE undermines his current claim that the  
 28 jobs identified by the VE were inconsistent with his RFC." (Joint Stip. at 20; *see also* A.R. 47 "Ms. Carlos, do you  
 have any questions? No questions, Your Honor.") To the extent that the Commissioner attempts to characterize  
 precedent as supportive of its conclusion, the Court reminds the Commissioner that it is not counsel's burden to  
 identify conflict, and the burden remains with the ALJ under *Massachi* and SSR 00-4p. Therefore, the fact that

1 According to the DOT job description, a surveillance systems monitor:

2  
3 Monitors premises of public transportation terminals to detect crimes or  
4 disturbances, using closed circuit television monitors, and notifies  
5 authorities by telephone of need for corrective action: Observes television  
6 screens that transmit in sequence views of transportation facility sites.  
7 Pushes hold button to maintain surveillance of location where incident is  
8 developing, and telephones police or other designated agency to notify  
9 authorities of location of disruptive activity. Adjusts monitor controls when  
10 required to improve reception, and notifies repair service of equipment  
11 malfunctions.

12  
13 DOT 379.367-010. According to the DOT job description, an information clerk at a  
14 call center:

15  
16 Answers telephone calls from customers requesting current stock quotations  
17 and provides information posted on electronic quote board. Relays calls to  
18 REGISTERED REPRESENTATIVE (financial) 250.257-018 as requested by  
19 customer. May call customers to inform them of stock quotations.

20  
21 DOT 237.367-046. Both jobs are assigned exertional levels of “unskilled”  
22 “sedentary”.

23  
24 The only support Plaintiff offers for arguing that the above DOT job  
25 descriptions somehow conflict with Plaintiff’s RFC limitations as assessed by the  
26 ALJ, is to portray the jobs of surveillance system monitor and information clerk at a

27  
28 

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Plaintiff’s counsel did not question the VE, or challenge the VE’s interpretation or application of the DOT during her closing comments, is inconsequential. (*Id.* at 47-48.)

1 call center as requiring use of the bilateral upper extremities—which was precluded  
2 in the RFC limitations. Notably, Plaintiff does not dispute that according to the  
3 DOT, the jobs of surveillance systems monitor and information clerk at a call center  
4 *did not actually require* any reaching, handling, fingering, or feeling of the bilateral  
5 upper extremities.

6  
7 Rather, Plaintiff contends that because both alternative jobs are at the  
8 unskilled sedentary exertional level, and most such jobs “require good use of the  
9 hands and fingers,” Plaintiff cannot perform them due to his amputation of the left  
10 arm. (Joint Stip. at 17-18.) Specifically, Plaintiff argues that he cannot perform the  
11 job of surveillance systems monitor because “[i]t would be difficult for an individual  
12 with one arm to push the hold button to maintain surveillance of location where  
13 incident is developing and telephone police at the same time to inform them of the  
14 developing situation.” (Joint Stip. at 18.) Similarly, Plaintiff argues that he cannot  
15 perform the job of information clerk at a call center because that job requires “an  
16 individual to answer or make phone calls all day,” which Plaintiff cannot do “with  
17 the use of only one arm.” (Joint Stip. at 18.)

18  
19 Plaintiff’s argument that the assessed RFC is not compatible with the VE’s  
20 testimony or the DOT is not rooted in objective data concerning how either job is  
21 “generally performed” or “actually performed.” Rather, Plaintiff’s contention  
22 appears to derive entirely from conjecture and personal opinion. For instance, the  
23 DOT does not specify that a surveillance systems monitor must push a hold button  
24 with one arm while simultaneously telephoning police with the other arm. There is  
25 also no apparent conflict between the assessed RFC and the job requirement of  
26 answering or making phone calls. Recently, this Court found that such arguments  
27 based on “common sense,” do not overcome the actual language contained in the  
28

1 DOT. *See e.g. Jones v. Colvin*, 2015 U.S. Dist. LEXIS 33815, \*\*14-15 (C.D. Cal.  
2 Mar. 18, 2015).

3  
4 In *Jones*, a plaintiff argued that the “ALJ erred in relying on the VE’s  
5 testimony that plaintiff could perform the occupation of school bus monitor, because  
6 it would be ‘impossible’ for plaintiff to perform this occupation given that she: (1)  
7 needs to use a cane whenever changing from sitting to standing, or vice versa; and  
8 (2) cannot withstand exposure to concentrated vibration.” *Jones*, 2015 U.S. Dist.  
9 LEXIS 33815, at \*13. Although Jones conceded that “the VE’s testimony is  
10 consistent with the DOT,” she maintained that “the ALJ erred because it ‘defies  
11 common sense’ to charge an individual who requires a cane to go from sitting to  
12 standing, and vice versa, with maintaining discipline and safety and preventing  
13 altercations,” and that “[a]nyone who has had the pleasure of riding on a school bus  
14 is well aware that the ride is extremely bumpy and has constant vibration.” *Id.* at  
15 \*\*14-15. Unpersuaded, this Court upheld “the ALJ’s determination that plaintiff  
16 could perform the occupation of school bus monitor,” stating that it was “aware of  
17 no legal authority that permits an ALJ to reject VE testimony and the DOT  
18 whenever he feels it conflicts with ‘common sense’ and his own personal  
19 experiences.” *Id.* at \*15.

20  
21 Here, as in *Jones*, Plaintiff offers no authority to support his contention that  
22 the ALJ should not have relied on “the DOT’s description of the requirements for  
23 each listed occupation and on VE testimony about the specific occupations that the  
24 plaintiff can perform.” *Id.* Accordingly, the Court finds that the ALJ’s  
25 determination that Plaintiff, based on the VE’s testimony, can perform the  
26 occupations of surveillance systems monitor and information clerk, lacks legal error  
27 and is supported by substantial evidence. *Zavalin v. Colvin*, 778 F.3d 842, 846 (9th  
28 Cir. 2015); *see also Osenbrock v. Apfel*, 240 F.3d 1157, 1163 (9th Cir. 2001)



(testimony of a VE constitutes substantial evidence); *Bayliss*, 427 F.3d at 1218 (ALJ may rely on “any reliable job information,” including the testimony of a VE); *Johnson*, 60 F.3d at 1435.

## CONCLUSION

For the reasons stated above, the Court finds that the Commissioner’s decision is supported by substantial evidence and free from material legal error. Neither reversal of the ALJ’s decision nor remand is warranted.

Accordingly, IT IS ORDERED that Judgment shall be entered affirming the decision of the Commissioner of the Social Security Administration.

IT IS FURTHER ORDERED that the Clerk of the Court shall serve copies of this Memorandum Opinion and Order and the Judgment on counsel for plaintiff and for defendant.

**LET JUDGMENT BE ENTERED ACCORDINGLY.**

DATED: April 21, 2016

  
KAREN L. STEVENSON  
UNITED STATES MAGISTRATE JUDGE